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## **Ref: Consultation on the Early Stage Assessment for Anticipatory Investment**

Dear Offshore Coordination Team,

RWE is a leading global energy player, with a 38 GW global generating capacity worldwide, and a clear target: to get to net zero by 2040. With its new strategy 'Growing Green' (announced in November 2021) RWE expects to invest €50 billion gross in its core business globally - an average of €5 billion gross each year for offshore and onshore wind, solar, batteries, flexible generation and hydrogen.

RWE is the UK's largest power producer, accounting for around 15% of all electricity generated across a portfolio of onshore wind, offshore wind, hydro, biomass and gas, amounting to over 10 GW pro rata<sup>1</sup> (12 GW installed capacity) - enough to power over 10 million UK homes.

RWE is also one of the largest renewables generators in the UK, with a combined installed capacity of over 2.79 GW (pro rata) (4.8 GW installed capacity) across our onshore wind, offshore wind, hydro and biomass assets. In addition to its growing renewables portfolio, RWE operates around 7GW of modern and efficient gas-fired capacity in the UK, making us one of the largest providers of firm flexible generation, which is crucial for security of supply.

Overall, and including its committed investments in projects already under construction, RWE expects to invest up to £15 billion in new green technologies and infrastructure in the UK by 2030.

Thank you for the opportunity to respond to the consultation on the Early Stage Assessment for Anticipatory Investment.

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<sup>1</sup> Pro-rata – based on equity share

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# RWE

## Summary

- We support the principle of allowing the Later User to assume responsibility for the construction of the coordination solution should the Initial User be delayed, however we are concerned the practicalities of switching roles will be challenging.
- We do not support the introduction of tolerance levels for anticipatory investment costs. Based on our experience to date, the proposed 5% tolerance for unforeseen increases is insufficient and it is very likely that costs from early development (pre-contract award) will change by significantly more than this.
- We encourage Ofgem to consider alternative approaches to provide certainty on anticipatory investment costs, which are more practical. We have included a number of suggestions in our response to Question 3.

## Approach to the Early-Stage Assessment

### **1. Do you agree that the later user should assume responsibility for the construction of the coordinated solution should the initial user become delayed?**

In principle we agree that it would be sensible to allow the Later User to be able to continue progressing the connection works required, should the Initial User be delayed. However, the complexity of “assuming responsibility” should not be underestimated.

Throughout the Guidance and Consultation Ofgem focuses on coordination between an Initial User and a single Later User. Ofgem should be mindful that in some circumstances there could be multiple Later Users i.e. multiple windfarms whose power could make use of the AI in specific circumstances (i.e. cable outage) or a wind farm and a TO in combination. The concept of “assuming responsibility” and indeed the application process for the ESA would become increasingly complex with multiple Later Users involved. Ofgem should clarify whether the Initial User should make the application jointly with the Later User who is most likely to use the AI or all the possible Later Users, and how this should be determined (for example is this Ofgem’s role via the Asset Classification exercise or NGESO’s role).

There are number of key points we think should be considered:

#### *1. The point at which responsibilities change needs to be practical.*

There should be sufficient notice for the Later User if it is likely that it will need to assume responsibilities of the Initial User. Ofgem should consider placing requirements on the Initial User to provide updates on progress to ensure any delay can be identified as early as possible.



## *2. Transfer of responsibilities*

Ofgem should also consider the practicalities of needing to transfer over responsibilities, for example if stakeholder engagement, consenting or procurement activities have been carried out by the Initial User transferring responsibilities to the Later User is unlikely to be straightforward. The advice from regulators is to engage early, if the Later User is not expecting to be responsible for consenting cable routes (on and offshore) and landfalls etc. then this opportunity will be lost and could lead to further delays. The impact of this with regard to other stakeholders beyond regulators is likely to be significant, groups such as fishers, land owners and local residents will need to be engaged with, changing the development party will not only cause frustration but significant delay in renegotiating any agreements.

## *3. Cost allowances should be revisited when the Later User assumes responsibility for further development and construction.*

If the application has been approved via the Early Stage Assessment process and AI cost allowances set, we do not think it would be appropriate for the Later User (when assuming responsibility) to have to work within the cost allowances set for the Initial User.

We note the Guidance states in paragraph 3.3 that the Later User “will be required to carry [AI] out within the broad cost agreed between Ofgem and the Initial User at the ESA stage”. We encourage Ofgem to provide more clarity and Guidance on what this means at a practical level. At the very least we think the Later User should be able to review and confirm whether it considers these cost allowances deliverable. In the event that they are, the Later User would confirm “take-over” the original ESA process and related cost allowances. In the event that they are not, the Later User should be given the option to provide additional information to amend the original cost allowances. Given the information provided as part of our key points here, we consider it highly likely that additional costs would be incurred as part of the transfer process.

## *4. Later User Optionality*

It may be appropriate to allow the Later User the option to consider whether they wish to take over the ESA process and associated AI cost allowances or not. The Later User may determine it is more appropriate/they would prefer to also delay their project as opposed to assuming responsibility. Ofgem may also wish to consider how this optionality should work if there are multiple Later Users, as highlighted earlier in response to this question.

## *5. Radial Counterfactual*



We encourage Ofgem to set out in Guidance what would happen in a scenario where the Initial User is not just temporarily delayed, but instead permanently withdraws from the process or delayed indefinitely.

If the coordinated design in development remains at an early stage of development and is able to “pivot” to a radial counterfactual this may be a better outcome for consumers than proceeding with anticipatory investment that would immediately become a “stranded asset”.

#### *6. Interaction with grid liabilities and connection agreement milestones*

Delays which may occur to the Later User as a result of the transfer of responsibilities from the Initial User could create issues regarding grid liabilities as set out in Grid Connection Agreements. Later Users should be provided with derogations or similar for such penalties where delays which may incur liabilities – or indeed connection milestones breaches – are due to an Initial User defaulting on its responsibilities which then creates impacts for a Later User. (Note that this assumes that Ofgem’s position regarding projects being eligible for the ESA requires the project to have a recognised agreement in place with The Crown Estate / Crown Estate Scotland. No project should be able to circumvent the usual processes by way of the ESA).

#### *7. Interaction with the CfD process*

Ofgem may need to highlight to DESNeZ that additional allowances/extensions in the CfD contract could be needed for projects involved in AI. For instance, if a Later User assumes the role of the Initial User, but timings change outside of their control and there is a requirement to re-procure supply chain, additional allowances may be required. It is likely that these changes could impact the strike price that is viable for individual projects and as such consideration may be needed on how this can be addressed. If cost changes occur it may be simpler and fairer to change the AI cost allowances over making changes to the CfD strike price.

## **2. Do you have any views on the Draft Early-Stage Assessment Guidance Document?**

### *Timing of Submission*

We agree it is beneficial to allow the developer(s) to determine when to submit an application for the early stage assessment process and maintain flexibility here.

### *Review Period*

There is already an increased focus on accelerating the development timeline for offshore wind projects in the UK, as such, Ofgem’s early stage assessment process



should not add significant time to the development process or result in additional delay.

We welcome Ofgem's commitment to complete a timely review of each application, within the four month period as stated in the Guidance. It is important that projects have as much certainty as possible. We note Ofgem specifies four months but highlights that any public consultation would add approximately 2 months to the timescales. To avoid delay we would encourage Ofgem to consult, where relevant, for a maximum period of 4 weeks.

We would welcome regular engagement and a key point of contact being appointed for each ESA application to ensure there is clear and efficient communication between applicant and reviewer.

#### *Assessment Outcome*

Similar to the existing cost assessment process, we would welcome the opportunity to propose redaction of any commercially confidential information before a decision is published. In any event, we expect that Ofgem would treat the submitted costs as highly confidential and commercially sensitive and not disclose to any other person. For the avoidance of doubt and in any event, any request to disclose such costs and/or the information contained therein received by Ofgem should be refused as such disclosure would adversely affect the interest of the project and potentially distort competition and therefore not be in the public interest.

#### *Cost Review*

The Guidance highlights that Ofgem will benchmark costs of anticipatory investment against historic transmission projects and cost data. We have concerns with this approach. Where projects are coordinating and using HVDC technology there is likely to be limited data available in the UK due to a lack of historic projects, making the benchmarking data not statistically robust.

Further to this, we encourage Ofgem to consider the current market conditions faced by projects currently in development, in particular issues such as; limited suppliers of HVDC cables at specific specifications, fabrication and vessel availability etc. These market forces may mean that the price one developer achieves may not be achievable for another developer one year later.

Ofgem should also be mindful that these market forces mean that decisions may need to be taken/contracts placed well in advance of design completion in order to secure "factory slots" to avoid significant project delays. We encourage Ofgem to recognise that developers are attempting to manage uncertainty in the market with the need to deliver timely, commercially viable projects which is aligned with the interests of consumers.

#### *Assessment Requirements*



The Guidance does not specify whether the Initial User will be required to submit eligibility evidence for its own project or both the Initial and Later User. We would encourage Ofgem to allow each User to submit its own evidence as certain aspects may require commercial confidentiality. Ofgem should also clarify the process if a project fails to meet the eligibility criteria and/or dispute resolution is required to allow an application to be submitted.

It would be useful if Ofgem could set out the requirements/information required to be submitted as part of the application for projects for the different OTNR workstreams more clearly. Although this is covered in paragraphs 3.4 – 3.10, it is not clear in which circumstances optioneering assessment or CBA will be required. To ensure a robust submission can be made and minimise the risk of missing information, setting this out in a table format for different scenarios, such as that included in Annex 1, below, may be useful.

Please also clarify how the ESA process is expected to interact with NGESO's Impact Assessment process (currently being designed to assess design changes to the HND). We note NGESO is expecting Ofgem to review design alterations as part of the Impact Assessment process, however it is unclear whether this would mean Ofgem would not need to assess variations to the HND as part of the ESA, or whether two separate assessments are required.

### **Output, Cost Allowances and Material Change**

#### **3. Do you agree with Ofgem's proposed approach to cost disallowances in Anticipatory Investment?**

##### Cost Allowances

We remain concerned that the issue of disallowed costs associated with AI is not addressed via the current proposal to ringfence anticipatory investment costs.

We note it is unclear how Ofgem has determined the suitability of the 5% or 10% thresholds currently proposed. We would welcome this being provided in the Decision.

Ofgem recognises in paragraph 3.9 of the Consultation that costs will inevitably change as they mature. The proposed 5% tolerance for unforeseen increases is insufficient. It is simply not possible for projects in development to be able to predict costs at completion with a 5% error margin. Based on our current experience it is already very common for offshore radial wind projects to experience a 5-10% change in costs between taking FID (at which point contracts are signed, and costs are robust) and project completion. For projects with a CfD the FID would come within 18 months of the CfD win. Therefore, it is very likely that costs from early development (perhaps years before CfD award) will change significantly more than the 5-10% referenced above.



At a minimum we think Ofgem should consider the following options:

1. Ex-ante approval of Anticipatory Investment Costs

As previously flagged in RWE's response to Ofgem's *Early Opportunities: Consultation on our Minded-to Decision on Anticipatory Investment and Implementation of Policy Changes* and *Revised Minded-to Decision and further consultation on Pathway to 2030*, Ofgem should consider approval of AI costs on an ex ante basis to provide certainty. Ofgem already assess costs on an ex ante basis in other regimes (such as Cap & Floor and LOTI).

2. Staged Approach

Given that projects experience a cost change between initial submission and completion we think a staged approach where AI costs are re-submitted at certain milestones (such as invitation to tender, contract execution and completion) and reassessed over time would provide a more reasonable approach.

Developers could provide an initial high-level AI cost estimate at the beginning of the ESA process. This high-level estimate (or Baseline Submission) could provide an initial reference point for the analysis of AI costs. As costs mature, the project would resubmit an up-to-date view of the cost estimate. This update would be more granular than the Baseline. Thereafter, as contracts are signed and costs are firmed up, the project could resubmit cost updates at relevant project milestones which would trigger a revised ESA and the assessment would be used to understand the project evolution.

3. Disallowance sharing between Initial and Later User

The above approaches could also incorporate sharing of risk. The Later User that will be connecting to the deliberately oversized infrastructure benefits from the AI made by the Initial User and as such it may be appropriate for them to share any disallowed anticipatory investment costs.

We consider this would help address the balance of risk between the Initial and Later User and incentivise the Later User to be a proactive participant in the Early Stage Assessment submission.

Whilst this could be a commercial agreement, Ofgem's role could be to ensure this is in place and is applied in a way that is proportionate to the anticipatory investment and size of the projects.

4. Increase the tolerance level





Given projects already experience 5-10% of cost change between FID and completion we think the threshold for ringfencing of AI costs should be adjusted to provide a more reasonable approach.

The current proposed tolerance will almost certainly be breached in most scenarios and as such does not provide any comfort on AI costs to developers, thus not resolving the issue.

We are unable to determine an accurate estimate that would be meaningful, in reality project costs from early development to completion can change significantly (based on radial projects, where industry and developers have experience).

5. Consider using a combination of the tolerance levels alongside project contingency and risk register – akin to the process used on the Cap & Floor regime and LOTI as opposed to setting a standard threshold %.

The developer could include a copy of the project risk register in its submission, detailing an overview of the project's risk management strategy and a clear description of the project's process for estimating the risk costs.

If a risk included in the risk register is materialised then it wouldn't count towards the standard threshold %. However, we consider this is a complex approach which is open to subjectivity and alternatives suggested above are likely to be more suitable.

Ofgem has previously acknowledged that for the aims of the OTNR to be realised and potential coordination opportunities to be considered, the OFTO cost assessment process needs to change. The current proposed approach for ringfencing AI costs will not give developers early assurance that costs will not be disallowed, and thus developers will not be able to proceed with coordination with confidence. The current proposal means AI disallowance risk remains a commercial blocker to projects progressing, undermining coordinated grid and the objectives of the OTNR.

#### **4. Do you have any views on what should constitute material change for projects?**

We agree that the threshold of materiality for any change should be considered on a project-by-project basis, noting that these early coordination projects are first of a kind and changes, at this stage, may not be foreseen.

It is important to note, that it is very common for projects to change significantly during the development cycle due to factors such as changes in technology and enhanced understanding of the wind farm site and its optimal capacity/configuration. It is important that the in principle approval issued by Ofgem recognises this and that examples of material amendments or updates that would trigger the need for a re-assessment are clearly set out in Guidance. Material changes could include:





- Change in ownership, whereby the “lead developer” changes<sup>2</sup>
- Change to project scope such as technical parameters which would have a consequential impact on anticipatory investment requirements (for example, number of cables, failure to achieve planning permission/DCO)

### **5. Do you agree with Ofgem’s proposed approach to projects which experience material change?**

We agree that where a material change has been assessed and determined that it does not have an adverse impact on the assessment already completed, a letter confirming the ESA outcome is unchanged could be issued.

Where the material change impacts the overall needs case and consumer benefits, we agree the proposal should be re-assessed. However, we consider Ofgem should be able to provide a streamlined process to ensure unnecessary delays are avoided -as indicated in paragraph 3.26 of the Guidance accompanying this Consultation.

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<sup>2</sup> Changes in shareholders should not warrant a material change providing the lead development organisation remains the same.



## Annex 1

A table may provide a useful format, for example:

Requirement	Early Opportunities	PT2030 as per HND or HNDDUE or as per variation to HND or HNDFUE approved via NGESO's Impact Assessment Process	PT2030 variation to HND or HNDFUE
<b>Optioneering</b>	<b>Options analysis</b> of alternative coordinated solutions, with costings and justifications for the selected solution (para 3.4.6)		Differences to HND detailed together with an explanation of how the proposal submitted meets the objectives of the OTNR (para 3.7)  <b>Options analysis</b> , with costs, which breaks down the benefits and disbenefits for each of the potential coordinated solutions which require Anticipatory Investment to be made and justification for the proposed coordinated solution selected (para 3.9.2)
<b>Benefits assessment</b>	Breakdown of <b>monetary benefit for consumer/developer/other parties</b> as a direct result of the proposed coordinated solution (para 3.4.7)  +  Detailed breakdown of additional benefits including (but not limited to) environmental and social benefits (para 3.4.8)	Any coordinated solution in the HND or HNDFUE there is no requirement for a CBA by developers (para 3.6 and 3.10)	If projects deviate from the <b>HND or HNDFUE</b> , <b>expect to see a detailed CBA for the coordination solution</b> – including indicative summary of the cost for the proposed Anticipatory Investment and <b>avoided cost</b> for any potential later user(s), the consumer, and any other impacted parties and a qualitative breakdown of the additional benefits of the proposed coordinated solution; this must include environmental and social considerations (para 3.9.1 and 3.9.2)

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